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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER GANSEN
and MASSIMO LOSIO

Appeal 2008-5758
Application 09/726,075
Technology Center 1700

Decided: January 26, 2009

Before BRADLEY R. GARRIS, MICHAEL P. COLAIANNI, and
JEFFREY B. ROBERTSON, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's
decision rejecting claims 70-74. We have jurisdiction under 35 U.S.C. § 6.

The Appeal was heard on January 15, 2009.

We REVERSE.

STATEMENT OF THE CASE

Appellants claim a seat cushion comprising a covering material that is impermeable to polyurethane gel, and a multilayered polyurethane molding comprising a polyurethane gel layer and a polyurethane foam layer which layers are different from and bonded to one another.

A copy of representative independent claim 70, taken from the Claims Appendix of Appellants' Appeal Brief, is set forth below:

70. A seat cushion, comprising:

a covering material that is impermeable to polyurethane gel and which is selected from the group consisting of leathers, films, and textiles;

a multilayered polyurethane molding positioned under the covering material, said multilayered polyurethane molding comprising

at least one polyurethane gel layer;

at least one polyurethane foam layer, said at least one polyurethane gel layer and said at least one polyurethane foam layer being different from one another; and

a bond between said at least one polyurethane gel and said at least one polyurethane foam which is formed only from said at least one polyurethane gel and said at least one polyurethane foam.

The Examiner rejects all appealed claims under 35 U.S.C. § 102(e) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious over, Kenndoff (US Patent 5,844,013 issued Dec. 1, 1998).

ISSUE

Have Appellants established error in the Examiner's determination that Kenndoff teaches or would have suggested an article satisfying the

claim 70 requirement of a covering material that is impermeable to polyurethane gel and a multilayered polyurethane molding comprising a polyurethane gel layer and a polyurethane foam layer different from and bonded to the gel layer?

FINDINGS OF FACT

It is undisputed that Kenndoff discloses wound dressings comprising hydrophilic polyurethane gel foams (Abstract) which can be applied to backing materials (col. 10, ll. 6-14) ", for example, plastic and metal sheets, mats, nonwoven, knitted or woven fabrics of organic or inorganic fiber material, paper and foams sheets or also combinations of these backing materials" (col. 10, ll. 15-18). As such backing materials, "[p]olyurethane sheets are particularly preferred" (col. 10, l. 23).

PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers, Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

For a § 102 rejection to be proper, the applied reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the reference. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972).

Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of

obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR v. Teleflex*, 127 S. Ct. 1727, 1741 (2007).

ANALYSIS

Concerning the § 102 rejection, Appellants argue, *inter alia*, that Kenndoff does not disclose the claim 70 requirement of a covering material which is impermeable to polyurethane gel and a multilayered polyurethane molding comprising a polyurethane gel layer and a polyurethane foam layer which is different from the gel layer (Br. 13). We agree.

Apparently, the Examiner finds these limitations to be satisfied by Kenndoff's disclosure of polyurethane gel foam (i.e., the here-claimed polyurethane gel layer) applied to a combination of backing materials comprising polyurethane sheets (i.e., the here-claimed covering material) including foam sheets (i.e., the here-claimed polyurethane foam layer) (Ans. 3-4; *cf.*, 5-6). However, the Examiner has not explained on this record why the Kenndoff reference is thought to clearly and unequivocally disclose this combination of claim limitations without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of Kenndoff. For this reason, the Examiner's finding of anticipation is erroneous.

In rejecting the appealed claims under § 103, the Examiner concludes that "it would have been obvious for one having ordinary skill in the art to have employed combinations of the backing materials of Kenndoff . . . within the teachings of Kenndoff . . . for the purpose of imparting their structural effects in order to arrive at the products of [A]ppellants' claims with the expectation of success in the absence of a showing of new or unexpected results" (Ans. 6). Apparently, the Examiner believes that

Kenndoff's disclosure at lines 10-24 in column 10 would have suggested a combination of backing materials including polyurethane sheets and foams (Ans. 5) which would satisfy the covering material and polyurethane foam layer limitations of claim 70. However, we agree with Appellants that the Examiner has erred in determining Kenndoff would have suggested these claim 70 limitations (Br. 17-19).

The Examiner has failed to provide the record before us with articulated reasoning with rational underpinning to support the legal conclusion that the subject matter defined by claim 70 would have been obvious to one with ordinary skill in this art. In this regard, we observe that the Examiner has not even addressed the argued claim 70 requirement of a covering material which is "impermeable to polyurethane gel," much less articulated any reasoning with rational support for concluding that it would have been obvious to provide the dressing of Kenndoff with a covering material having the claimed impermeability characteristic. Similarly, while it is true that Kenndoff teaches the use of foam sheets as backing materials, the Examiner has not specifically and rationally explained why an artisan would have not only selected foam sheets as backing material, but also would have formed this foam sheet from polyurethane and bonded the resulting polyurethane foam sheet to patentee's polyurethane gel foam. In the absence of such explanation, no basis exists for an obviousness conclusion concerning the claim 70 requirement of a polyurethane gel layer bonded to a polyurethane foam layer.

CONCLUSIONS OF LAW

Appellant has established error in the Examiner's determination that Kenndoff teaches or would have suggested an article satisfying the claim 70

requirement of a covering material that is impermeable to polyurethane gel and a multilayered polyurethane molding comprising a polyurethane gel layer and a polyurethane foam layer different from and bonded to the polyurethane gel layer.

Accordingly, we cannot sustain the Examiner's §§ 102/103 rejections of claims 70-74 over Kenndoff.

ORDER

The decision of the Examiner is reversed.

REVERSED

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